

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

DARREN CUFF,

Plaintiff,

vs.

TRANS STATES HOLDINGS, INC.,
TRANS STATES AIRLINES, GOJET
AIRLINES, and ED TROWBRIDGE.

Defendants.

Case No. 10-cv-01349

Honorable Harry D. Leinenweber
Magistrate Judge Cole

**MOTION TO DISMISS DEFENDANT GOJET AIRLINES
PURSUANT TO RULE 12(b)(6)**

COMES NOW Defendant GoJet Airlines (hereafter "GoJet") by and through its undersigned counsel of record and files this motion to dismiss GoJet from Plaintiff Darren Cuff's suit for failure to state a claim upon which relief can be granted, as authorized by Federal Rule of Civil Procedure 12(b)(6). In support of its motion, GoJet states as follows:

INTRODUCTION

1. Plaintiff Darren Cuff (hereafter "Plaintiff") filed the above captioned matter on or about February 26, 2010 against Trans States Holdings, Inc., Trans States Airlines, GoJet Airlines, and Ed Trowbridge (collectively "Defendants").

2. Plaintiff alleges that Defendants engaged in FMLA Interference and FMLA Retaliation pursuant to 29 U.S.C. §2615.

3. Plaintiff's complaint does not state a claim upon which relief can be granted as to GoJet and therefore this Court should dismiss GoJet from this action pursuant to Federal Rule of Civil Procedure 12(b)(6).

ARGUMENT

4. This Court has authority to dismiss a suit for failure to state a claim upon which relief can be granted if the complaint does not state factual allegations showing that the right to relief is plausible and above mere speculation. *Bell Atl. Corp. v. Twombly*, 550 U.S. 554, 555-556, 570 (2007).

5. Plaintiff's cause of action is based on alleged violations of 29 U.S.C. § 2615, which make it unlawful for "any *employer* to interfere with, restrain, or deny the exercise" of any rights provided under the FMLA.

6. Plaintiff alleges in his Complaint that he was hired by Defendant Trans States Holdings. *See Complaint at Law* ¶12.

7. Plaintiff does not allege anywhere in his complaint that he was employed by GoJet, rather he merely alleges that he worked side-by-side with both Trans States Airlines and GoJet employees, and was considered one of them (a fact which GoJet denies). *See Complaint at Law* ¶13.

8. Working along side another company's employees is not sufficient to make you a person an employee of that company. Plaintiff was not, and has never been, an employee of GoJet Airlines. Further, Plaintiff was never paid by GoJet nor never received benefits from GoJet.

9. Because GoJet was not Plaintiff's employer, Plaintiff's claims against GoJet pursuant to 29 U.S.C. § 2615 are not plausible.

WHEREFORE for the foregoing reasons GoJet Airlines hereby requests that this honorable Court dismiss it from this action and for such other further relief as this Court deems just and proper under the circumstances.

Dated: March 26, 2010

Respectfully Submitted,

/s/ David J.A. Hayes, III

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CERTIFICATE OF ELECTRONIC SERVICE
Darren Cuff v. Trans States Holdings, Inc., et al.
10-CV-01349

I hereby certify that on March 26, 2010, I electronically filed the foregoing **Motion to Dismiss**, with the Clerk of the Court for the Northern District of Illinois using the ECF System which will send notification to the following registered participants of the ECF System as listed on the Court's Notice of Filing: Alejandro Caffarelli and Bradley Manewith.

I also certify that I have sent a paper copy, via standard overnight delivery, to: Judge Leinenweber pursuant to Local Rule 5.2(a).

Dated: March 26, 2010

Respectfully Submitted,

/s/ David J.A. Hayes, III

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